

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0230 RO

Retail Sales Tax, Withholding Tax

Responsible Officer Liabilities

For Tax Period: 1991 Through 1996

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ISSUE

I. Retail Sales Tax, Withholding Tax – Responsible Officer Liabilities

Authority: IC 6-2.5-9-3; IC 6-3-4-8; IC 6-8.1-5-1

Taxpayer protests the imposition of responsible officer liabilities for trust taxes not paid.

STATEMENT OF FACTS

Taxpayer was assessed responsible officer liabilities for trust taxes not paid by Company K during the tax periods 1991 through 1996. Taxpayer's father was the sole shareholder and incorporator of Company K and had been assessed responsible officer liabilities as well. Taxpayer was not assessed until after the Department learned his father was deceased. Taxpayer protested the responsible officer liabilities. Additional relevant facts will be provided below, as necessary.

I. Retail Sales Tax, Withholding Tax – Responsible Officer Liabilities

DISCUSSION

Indiana Code section 6-3-4-8 states in part:

(a) Except as provided in subsection (d), every employer making payments of wages subject to tax under

IC 6-3, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department... Such employer making payments of any wages:

- (1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section; and
- (2) shall make return of and payment to the department monthly of the amount of tax which under IC 6-3 and IC 6-3.5 he is required to withhold.

Indiana Code section 6-2.5-9-3 states,

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

Pursuant to Indiana Code section 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made..."

Taxpayer argues he was not a responsible officer with the duty to remit the trust taxes to the state. Taxpayer claims his father had sole control over Company K's finances during the assessment period. Taxpayer states he served as corporate Secretary simply as a matter of convenience. Taxpayer states his mother held the position of Secretary until her death in 1990. In order for checks to be signed while taxpayer's father was away on business calls, taxpayer was given signatory authority.

Taxpayer has offered an overwhelming amount of evidence to support his claim. Taxpayer submits affidavits from several former employees and counsel of Company K which state taxpayer's father had the sole authorization of checks on accounts payable, including checks issued to the Department. Taxpayer also submits copies of vouchers which accompanied monthly remittances to the Department for both sales and use tax and withholding tax. All vouchers were signed by taxpayer's father. Taxpayer submitted company records for a variety of business endeavors including a sale of assets and bankruptcy proceedings. All records were authorized and signed by taxpayer's father alone. Taxpayer only signed occasional company checks to receive deliveries C.O.D. or when otherwise authorized by his father. Taxpayer's main duties

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at Company K were maintenance-related.

FINDING

Taxpayer's protest is sustained. Taxpayer has proven to the Department's satisfaction that his father was the sole responsible officer with regard to trust taxes owed by Company K during the assessment period.